IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1287 OF 2003

CMM Limited & Ors. ... Petitioners

V/s.

Union of India & Ors. ... Respondents

Mr. S.C. Naidu for petitioner.
Mr. A.C. Singh with Mr. D.A. Dubey for respondent No. 1.
Mr. Salil Shah with Mr. Darshan Mehta i/b. Dhruve Liladhar & Co. for respondent No. 2.
Mr. Birendra Saraf with Mr. D. Chaoraswt i/b. M.K. Ambalal & Co. for respondent No. 3.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 10th November, 2006

P.C.

. When the petition was admitted, one of the grounds was the challenge to the validity of Securitisation Act. The Supreme Court has subsequently negatived the challenge. The respondent No. 3 has also issued notice under Section 13 of the Securitisation Act. This Court at interim stage by order dated 4th August, 2003 had permitted contesting respondent i.e. respondent No. 3 to take possession of the property but not to sell, lease, alienate or otherwise transfer said properties until further orders.

2. On behalf of petitioner, the learned Counsel submits that notice issued under Section 13 of the Securitisation Act is without jurisdiction. That submission is based on the ground that consent terms were arrived at between parties on 09.03.2000 and which were accepted by the DRT and consent order came to be passed on 13.03.2000. It appears that the properties which were required to be sold to pay respondent No. 2, could not be sold for various reasons, which we need not go in detail. A certificate came to be issued on 25.05.2001 for the entire amount.

. The submission of the counsel for the petitioner, therefore, is that once there is an order, it is not open to the respondent No. 2 to issue notice under Securitisation Act. It is contended that once an order is passed, respondent is not borrower and consequently no notice can be issued. Having heard the learned Counsel, we are not impressed. Insofar as properties which were secured in favour of respondent No.2, on the notice being issued under Section 13 of the Securitisation Act for the amount which is due and payable, it is always open to the contesting party to prefer an appeal before the DRT in

terms of law laid down by the Supreme Court. Even otherwise by an action under the Securitisation Act, what happens is that, there is no decree for the entire amount. The party in whose favour the security is held is entitled to dispose of the secured assets for the purpose of realising the amounts which are due and payable. If there is a decree, then at the highest, the amount which can be paid will be the amount in terms of the decree. In these circumstances, if respondent No. 2 sells the property, it will only be for the purpose of realising the amount which will be adjusted in terms of the order already passed by DRT.

3. Our attention is also invited to various orders passed by the DRT including an order dated 14.09.2000, whereby though there is no restraint on sale of the property, it is directed that the amount realised should not be disbursed. We do not propose to interfere with the said order. Whatever sum realised from the sale will be in terms of order that DRT will pass in the pending proceeding.

4. Respondent No. 2, not to sell properties for a period of four weeks from today.

5. It will be open to the petitioner to raise all available points in appeal. At any rate this is not a fit case for us to exercise our extra ordinary jurisdiction.

6. With the above observation, the petition stands disposed of.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]